COMMISSION ON SECURITY AND
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THE MOSCOW MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CONFERENCE ON SECURITY AND COOPERATION IN EUROPE

10 September - 4 October 1991

A REPORT PREPARED BY THE STAFF
OF THE COMMISSION ON SECURITY AND
COOPERATION IN EUROPE

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I. Overview

In accordance with the mandate of the Vienna Concluding Document, the 38 states participating in the Conference on Security and Cooperation in Europe (CSCE) met in Moscow from September 10 through October 4, 1991, for the third meeting of the Conference on the Human Dimension (CHD, or CDH from the French acronym) of the CSCE. The first meeting of the Conference was held in Paris from May 30 through June 23, 1989, and the second was held in Copenhagen from June 5 through 29, 1990. The meetings of the CHD address the full range of human rights and humanitarian concerns associated with the Helsinki process.

The main elements of the meeting are summarized below:

Participants: The Moscow Meeting was the first CDH meeting in which Albania, which had become a member of the CSCE in June 1991, participated fully. Also, Estonia, Latvia, and Lithuania were admitted to the CSCE on the first day of the Moscow Meeting and participated in it.

A Foreign Ministers' Meeting was held to admit the Baltic States to the CSCE immediately prior to the opening of the Moscow Meeting. Secretary of State James A. Baker missed the special meeting and the opening of the Moscow Meeting but attended the following day to give the United States' opening statement. The U.S. delegation was led by Ambassador Max Kampelman, who had previously distinguished himself as head of the U.S. delegations to the Copenhagen Meeting of the CDH (1990) and the Madrid Follow-Up Meeting (1980-83.)

Commission Involvement: The Helsinki Commission played an active role in preparations for the meeting, contributing to the development of positions and managing work with American NGOs planning to attend. Chairman Steny H. Hoyer and Co-Chairman Dennis DeConcini led a congressional delegation to Moscow for the opening of the meeting. Commission Staff Director Sam Wise and Senior Adviser David Evans served as Deputy Heads of Delegation, and Commission staff served as delegation members participating in all aspects of the meeting.

NGO Activities: Representatives of numerous non-governmental organizations from the United States, the Soviet Union, and other participating States attended the Moscow Meeting. For the first time, the number of Soviet NGOs and private citizens participating was overwhelming. In addition to attending plenary sessions and meeting with delegations, NGOs participated in parallel activities sponsored by the Soviet committee set up for the Meeting, but also organized their own press conferences, meetings, and cultural events.

New Directions for the CSCE: Both in the proposals introduced (totalling 49) and in corridor discussion, a change in the direction of CSCE was evident. Delegates were concerned that the CSCE had run out of useful commitments to make; meanwhile, emphasis was turning toward social rights for groups. Strong national positions prevented the European Community and NATO from playing strong coordinating roles and raised the question of how many more commitments could usefully be made. Concerns were also expressed over CSCE's inability to deal with the crisis in Yugoslavia and the devolution of power to Soviet republics. Discussion was also held on the U.S., Polish, and Italian proposals to convert the CSCE Office for Free Elections into an Office for Democratic Institutions, an idea which gathered wide but not universal support.

The Moscow Document: At the end of the meeting, the Moscow Document was adopted, deepening previous CSCE commitments, strengthening the Human Dimension Mechanism, and stating categorically that human dimension issues are of international concern and not solely the internal affair of the State concerned. Highlights of the key provisions follow:

The Human Dimension Mechanism (paragraphs 1-16)

- The main achievement of the Moscow Meeting, the new mechanism contains a progression of steps. First, a state may request a mission of experts selected from a CSCE list to address a human dimension issue through good offices, mediation, or other activities as needed. Other states may also request a state to invite such a panel. If that panel is not successful, or if a state refuses to invite a panel onto its territory, the mechanism provides for further mandatory steps, more intrusive and confrontational. A state may be forced to receive a mission if, a voluntary mission having failed or been refused, six CSCE states support the creation of a mission for fact-finding. In extraordinary cases, a mandatory fact-finding mission may be created immediately if ten states agree.

Rule of Law and Democratic Institutions (paragraphs 17-31)

- New commitments address:
  - -- the importance of open and accountable legislative processes and review of administrative decisions;
  - -- independent judiciaries;
  - -- regulating the conduct of law enforcement personnel;
  - -- the rights of arrestees and detainees;
  - -- the right to privacy from state intrusion;
  - -- civilian control of military, paramilitary and intelligence forces;
  - -- safeguards for independent media;
  - -- limitations on the imposition of states of emergency and protection of human rights during states of emergency.

Other Human Dimension Issues (paragraphs 32-43)

- o New commitments address:
  - -- easing internal travel and residence restrictions;
  - -- the rights of migrant workers;
  - -- facilitating humanitarian relief operations;
  - -- non-discriminatory treatment of women;
  - -- the rights of persons with disabilities;
  - -- human rights education;
  - -- the status of NGOs, and their access to CSCE states to observe implementation of CSCE commitments, as well as their access to CSCE meetings and documents.

II. Background

The concept of a Conference on the Human Dimension originated during the Vienna CSCE Follow-Up Meeting (November 1986 - January 1989). During the negotiations, Western countries -- particularly Canada, Denmark, France, the Netherlands, the United Kingdom, and the United States -- sought to elevate the status of human rights and other humanitarian issues within the CSCE. The desire for greater focus on human rights was in response both to the increased prominence and likely success of military security negotiations in CSCE, which threatened to upset a balance between security and human rights that has become a fundamental characteristic of CSCE; and because Soviet and East European observance of CSCE human rights commitments, although improved, continued to fall below CSCE standards.

A proposal by the member states of the European Community was therefore supported by the NATO countries and later adopted foreseeing the creation of a conference on "the human dimension of the CSCE" which would meet annually, three times between the Vienna Meeting and the next main follow-up meeting in Helsinki in 1992. The specific subject matter of the human dimension was defined as the relevant Basket I Principles and Basket III issues (encompassing human rights and humanitarian concerns.)

Difficult negotiations followed over the sites for the three conferences. Although the Eastern countries did not display much interest in such a conference, the Soviet Union had early in the Vienna Meeting tabled a proposal for a Conference on Humanitarian Cooperation, to be held in Moscow and omitting consideration of issues relating to the Principles.

At length, a compromise was reached setting the meetings for Paris in 1989, Copenhagen in 1990, and Moscow in 1991. The United States and the United Kingdom made their attendance at Moscow contingent on continued improvement in the human rights situation in the Soviet Union, particularly in the issuance of exit visas.

The Paris Meeting, coming so soon after the close of the Vienna Follow-Up Meeting, did not adopt a concluding document. However, progress and problems in implementation were reviewed, and numerous proposals were introduced, setting the stage for the conferences to follow.

In Copenhagen, on the other hand, the time was right for a major step forward. The Copenhagen Document, with its emphasis on human rights and freedoms, and a virtual "how-to" for a state governed by the rule of law, has been recognized by all the participating States as a seminal document.

As the Moscow Meeting approached, the United Kingdom formally lifted its reservation on attending the meeting, citing general improvement in the human rights situation and the passage of an imperfect but much-improved law on entry and exit. The United States, without a formal announcement, proceeded with plans for the meeting.

The coup attempt in the Soviet Union on August 19, 1991, and its aftermath changed the situation considerably. The United States indicated that it would not attend the meeting if the coup held; however, when the coup failed, the Soviet and Russian Governments agreed to organize the meeting and control the delegation jointly. The United States and others then agreed to attend.

Organization of the Meeting

The agenda for all three of the CDH meetings was laid out in the Vienna Concluding Document. It consists of:

1) Opening Statements;

2) A review of implementation of CSCE commitments;

3) A discussion of the human dimension mechanism (see section VII below) in both plenary sessions and Subsidiary Working Body A (SWB A);

4) The introduction and consideration of proposals in plenary sessions and in Subsidiary Working Body B (SWB B);

5) Concluding statements.

As with all non-military CSCE meetings mandated by the Vienna Concluding Document, the plenary sessions of the CDH were open to the public. The Soviet Government, as host of the Moscow Meeting, was responsible for ensuring that access to and openness of the meeting for private citizens and representatives of non-governmental organizations, or as members of the press were in accordance with the commitments contained in Annex XI of the Vienna Concluding Document and the Chairman's Statement attached to the Document of the Copenhagen Meeting of the CDH. Concern that the Soviet hosts would not live up to their commitments regarding openness and access was high prior to the Moscow Meeting, in part because the Soviet Government has not had a tradition of openness to non-governmental groups and individuals, much less free access to meetings of foreign officials. (For discussion of openness and access at Moscow, see sections on NGOs and "The Meeting.")

III. United States Objectives for the Meeting

The United States was concerned that the meeting be held in accordance with the Vienna Concluding Document and Copenhagen standards of openness and access to non-governmental groups and individuals, in light of past Soviet mistreatment of NGOs and of insufficiencies as the Soviets prepared for the meeting.

Within the meeting, the United States wanted to ensure a full and frank review of implementation. A lackluster implementation review at the Geneva Meeting on National Minorities, which had taken place in July 1991, fueled concerns that the desire to commend the states of Central and Eastern Europe and the Soviet Union for the progress they had made was inhibiting discussion of ongoing deficiencies in implementation. The United States felt that the drive to adopt new commitments and the need to acknowledge progress fully should not be allowed to supersede discussion of continuing or new problems, such as the resurgence of ethnic hatred.

The most important objective put forward by the United States was that the outcome of the meeting include a strengthening of the human dimension mechanism, based on a proposal the United States had put forward at Geneva. The proposal called for a procedure allowing a country to invite in a CSCE good offices mission to assist in the resolution of a problem relating to the human dimension.

The United States was interested in other steps forward from the Copenhagen Document, particularly in the area of the rule of law, if they could be achieved. In the face of pressure to repeat or step back from Copenhagen commitments, however, the United States took the position "above all, do no harm."

IV. U.S. Delegation to the Meeting

The U.S. delegation was headed by Ambassador Max M. Kampelman, who had previously served as U.S. head of delegation to the Madrid CSCE Follow-Up Meeting (1980-83), the Copenhagen Meeting of the CDH (1990) and the Geneva CSCE Meeting on National Minorities (1991).

Although he was not present for the extraordinary meeting of foreign ministers which admitted the Baltic States to the CSCE on Tuesday, September 10, Secretary of State James A. Baker attended the conference on Wednesday, September 11 and delivered the U.S. opening statement.

Thirteen U.S. citizens were appointed as public members of the delegation. The public members provided the delegation with valuable expertise in the subjects under discussion in Moscow as well as personal contacts with non-governmental organizations, particularly groups of Soviet citizens concerned with the Moscow Meeting. The public members were:

- Shoshana Cardin, Chair, Conference of Presidents of Major Jewish-American Organizations; National Conference on Soviet Jewry;
- Cathy Fitzpatrick, SOROS Foundation;
- Professor Richard Gardner, Columbia University School of Law;
- Adrian Karatnycky, Adviser to the President, AFL-CIO;
- The Reverend Leonid Kishkovsky, President, National Council of Churches;
- Van Krikorian, Director, Government Relations, Armenian Assembly of America;
- The Most Reverend Theodore McCarrick, Archbishop of Newark;
- Robert McConnell, Vice President, Coordinating Committee in Support of Ukraine;
- Jane Olson, Helsinki Watch;

- o Jerome Shestak, former U.S. Representative to the U.N. Commission on Human Rights;
- o Rudi Unterthiner, President, National Italian American Foundation;
- o Allen Weinstein, President, Center for the Study of Democratic Institutions;
- o Stanley Zax, President and Chairman of the Board, Zenith National Insurance Corporation.

V. Congressional Participation in the Meeting

Helsinki Commission Chairman Steny H. Hoyer (D-MD) and Co-Chairman Dennis DeConcini (D-AZ) led a delegation to the opening of the Moscow CDH Meeting. Members of the delegation included Helsinki Commissioners Ed Feighan (D-OH) and the Senior Adviser to the Secretary of Commerce, William Fritts. Other participants were Representatives: Ben Gilman (R-NY), Dan Glickman (D-KS), Jan Meyers (R-KS), Tom Sawyer (D-OH), David Skaggs (D-CO), Louise Slaughter (D-NY), Ben Jones (D-GA), Greg Laughlin (D-TX), Curt Weldon (R-PA), and Sander Levin (D-MI).

The delegation attended the opening session of the Conference, highlighted by President Gorbachev's address. In addition, delegation members met with U.S. head of delegation Ambassador Max Kampelman, Soviet co-head of delegation Sergei Kovalyev, the Executive Secretary of the Moscow Meeting, Soviet First Deputy Foreign Minister Vladimir Petrovsky, Soviet Defense Minister Evgeniy Shaposhnikov, and Russian Foreign Minister Andrei Kozyrev and attended a reception given by the Armenian Permanent Representative in Moscow in honor of the opening of the conference. The delegation had previously discussed CSCE issues with governmental and non-governmental organizations in the Baltic states, Georgia, and Armenia.

Helsinki Commission staff remained throughout the meeting, playing key roles in all aspects of the work of the delegation.

VI. Non-Governmental Organizations

A variety of non-governmental organizations (NGOs) from the United States and other participating States were represented at the Moscow Meeting, reflecting their continued interest in the CSCE and its potential to address a wide variety of issues.

Although some interested individuals complained of difficulties in gaining access to the meeting site, this seemed to reflect misunderstandings and breakdowns in communications rather than a deliberately obstructionist policy. Overall, NGO facilities and access at the meeting site were adequate and the Executive Secretariat was helpful.

As at previous CDH meetings, all plenary sessions of the Moscow Meeting were open to the public. With the exception of the opening day, when President Gorbachev spoke, seating was ample for NGO representatives, visitors, and the press.

NGOs used the opportunity of the plenary sessions to meet with delegations and distribute information. The U.S. delegation assisted NGOs in entering the meeting site when necessary, briefed them on the activities of the meeting, listened to their concerns, suggested others with whom to discuss their concerns, and helped them organize activities such as press conferences. Some NGOs complained that their written materials for distribution had been lost by the Soviet organizers, or that their distribution had been impeded. U.S. delegation members helped representatives of NGOs deliver information to delegation mailboxes.

U.S. NGOs attending included representatives of general human rights, human dimension and religious groups as well as Soviet Jewry, Baltic, Ukrainian, Armenian and Russian organizations. Other Western groups interested in human dimension issues attended, as well as representatives of many European ethnic groups such as Roma (Gypsies) and Macedonians. A range of issues and concerns was raised by NGOs from all participating States; however, the emphasis tended to fall on the situation in the republics of the Soviet Union.

Adding a new element to the character of NGO representation at CDH meetings was the preponderance among the attendees of NGOs and individuals from the Soviet Union and its republics. Many came to press the cause of self-determination and independence for various republics and autonomous regions, or to protest violations of human rights of minorities within republics such as the Gagauz and Russians in Moldavia and the Ossetians in Georgia.

Interest in using CSCE mechanisms and procedures to address human rights problems in the USSR was high -- Ukrainian miners as well as a Gagauz minority group proposed that monitoring or good offices missions be created to address their concerns. All-Union groups, such as the Moscow Helsinki Group, All-Union Memorial Society Human Rights Office, and Sakharov Organizing Committee Moscow Tribune, expressed their conviction that a constant, institutionalized foreign NGO presence throughout the Soviet Union is essential for the defense of human rights in the absence of binding legislation. NGOs consistently asserted that the existing Soviet Government cannot protect human rights, and they hoped that respected foreign groups could fill that role. Some Soviet NGOs worked closely with the Soviet delegation to introduce proposals (see "The Meeting -- Other Proposals" for discussion of NGO commitments in the document).

Other issues raised ranged from discrimination against Communists to rights of persons with disabilities to continuing human rights violations regarding alleged political prisoners and emigration restrictions.

Reflecting changing times, some Soviet NGOs warned against other Soviet NGOs. For example, the Russian Anti-Fascist Center stressed the alarming publications and activities of anti-Semitic organizations and complained of the failure of Soviet and Russian authorities to take judicial action against groups seeking to instigate inter-ethnic hatred.

Many individual Soviet citizens also attended, seeking help in redressing grievances against the Soviet system after decades of lawlessness and arbitrary administration of justice. Complaints ranged from unjustified loss of employment and placement in psychiatric hospitals to subjection to space-based rays launched and maintained by Soviet security organs. The U.S. delegation was able to do little more than listen to these individuals and forward their complaints to the Soviet delegation or the relevant republican authorities, suggesting to the Soviet delegation that it address the problems of these individuals.

In addition to their activities at the meeting, many NGOs from the Soviet Union and the West organized events, press conferences, seminars, and receptions. Others participated in the Soviet-sponsored parallel activities, which included a Chatauqua conference on the human dimension, a conference on minority refugees in CSCE states, a Quaker-sponsored roundtable on problems of national service, a conference on issues surrounding free media, and an Amnesty International workshop on the death penalty. Perhaps one of the most notable NGO-related events, and one indicative of changed Soviet attitudes toward NGOs, was the first-time ever meeting of National Council of Soviet Jewry leaders with President Gorbachev.

While NGO access to and involvement in the Moscow Meeting surpassed expectations, the numbers of NGOs attending fell far short of the Soviet expectations of 15,000. In response to concerns of those NGOs present, as well as some governments, an expanded or radically different role for NGOs in the future work of the human dimension was discussed. In addition to the expansion of NGO rights and expression of their concerns in the Moscow Document, some continued to press for the Soviet ideas regarding formalized NGO monitoring, broadening NGO participation in meetings or granting NGOs official status in the CSCE, along UN lines. However, many states remain completely opposed to any change in the status of NGOs, and the issue is sure to be discussed extensively at the Helsinki Follow-Up Meeting.

VII. The Meeting

Admission of the Baltic States

In the aftermath of the August coup attempt, the United States and most other CSCE participating States recognized the independence of the three Baltic States -- Estonia, Latvia, and Lithuania -- which had been striving for independence since their annexation by the Soviet Union in 1940. Willingness to admit the Baltic States to the CSCE, which the Commission had urged, developed into a consensus in the weeks prior to the opening of the Moscow Meeting. An extraordinary meeting of the CSCE Council of Foreign Ministers was convened under the chairmanship of German Foreign Minister Hans-Dietrich Genscher just prior to the opening of the conference. The decision to admit the three states was taken in accordance with paragraph 54 of the Helsinki "Blue Book" of procedure, which allows for the participation of all European states. Estonia, Latvia, and Lithuania, whose efforts to gain CSCE observer status had been consistently denied since the Copenhagen Meeting, were seated as full members at the opening of the Moscow Conference.

The Opening

The Moscow Meeting was held in the House of Unions in central Moscow. Its Hall of Columns, where plenary meetings were held, had previously been used for the show trials of the 1930s (and later, the trial of U-2 pilot Francis Gary Powers) and for the lying-in-state of Andrei Sakharov as well as Soviet leaders until Leonid Brezhnev.

The opening was attended by foreign ministers of most of the 38 participating States (although not Secretary of State James Baker, who arrived the following day to give the United States opening statement), Soviet President Mikhail Gorbachev, and such luminaries of the Soviet human rights movement as Yelena Bonner, Yuri Orlov, Gleb Yakunin, and Sergei Kovalyev, present in his capacity as the RSFSR-nominated co-head of the Soviet delegation.

President Gorbachev's opening statement reviewed recent events in his country and the important role of the international community in ensuring the triumph of democracy. Admitting that he personally had made mistakes leading up to the coup, Gorbachev called for swifter reform within the Soviet Union and greater support from without. Human rights, he admitted, were not respected everywhere within the Soviet Union, particularly the rights of minority groups. He called on the CSCE to take further measures on freedom of information and demilitarization, and to resist playing into the hands of "reactionaries, separatists and nationalists."

Other delegations' speeches focused on the uncertain situation in the Soviet Union and the importance of protecting human rights, particularly those of minorities, during the transition. The tragic violence in Yugoslavia was also commented upon by many delegations. Another issue often mentioned was the growing number of refugees in Europe and the potentially explosive nature of the refugee problem.

Many delegations called for the strengthening of the human dimension mechanism, and some joined a Netherlands/European Community call for closer links between the CSCE and the Council of Europe. The most specific -- and revolutionary -- proposals came in the speech of German Foreign Minister Hans-Dietrich Genscher. Calling for CSCE sanctions for countries violating CSCE commitments, Genscher proposed not only mandatory observers under the human dimension mechanism, but agreement that 37 CSCE participating States could "isolate" and take measures against a participating State in serious violation of its CSCE commitments without its consensus. (See discussion of the German ideas below.)

Review of Implementation

In contrast to the lackluster discussion a month earlier at the Geneva Meeting on National Minorities, delegations in Moscow were willing to point out shortcomings as well as progress in fulfillment of human rights commitments. Notably, perhaps the single most critical statement given was a self-criticism presented by Soviet co-head of delegation Sergei Kovalyev, a former political prisoner now chairing the RSFSR Supreme Soviet Human Rights Committee.

Kovalyev, amplifying earlier criticisms and promises of improvement made in the opening statements of Soviet President Gorbachev and Foreign Minister Pankin, said further improvement was necessary concerning exit visa regulations, internal passports, psychiatry, independent judiciary, capital punishment, prison conditions, and political prisoners. Moreover, the central government must cease actions violating the sovereignty of the republics, he said, citing the January 1991 violence in Lithuania and Latvia as a violation still requiring explanation to the international community. At the same time, he cited human rights violations in the republics and called for the responsibility for human rights to be moved from the national to the international arena.

His speech did not dissuade the United States and other delegations from reviewing their concerns with continuing Soviet shortcomings, particularly regarding long-term refuseniks, and human rights situations in the republics. The Georgian Government under President Gamsakhurdia was singled out for particular criticism for "restrictions on fundamental freedoms, even of the local Georgian population, [that] runs (sic) contrary to all that we aspired to achieve in signing the Charter of Paris." Many delegations also decried the violence against Armenians perpetrated by Azeri and Soviet forces. At one point, the Czechoslovak delegation indicated that it had invited the Armenian Supreme Soviet Human Rights and Nationalities Committee Chairman to address a CDH plenary, in order to provide balance to an Azeri speech given from the Soviet delegation. However, the Czechoslovaks concluded that this was not a proper use of guest status, and the address did not take place.

Considerable discussion of the situation in Yugoslavia took place, but the meeting was pervaded with a feeling of impotence at its inability to influence the tragic events there. The United States echoed Pope John Paul II by characterizing the civil war as "not worthy of the human race, not worthy of Europe," but it and others also raised the plight of ethnic Albanians in Kosovo. Problems of various Balkan minorities were reviewed at length by the delegations of the region; Bulgaria was criticized repeatedly for its refusal to register ethnically based political parties; and continuing substandard treatment of minorities in Romania was remarked on. Turkey's treatment of Kurds and of detainees was condemned by several neutral and Western delegations, with the United States criticizing Turkey in a CSCE statement for the first time. In its speeches, the U.S. delegation also highlighted the importance of free media and free elections in the development of democratic societies.

A further development in implementation review came with the Soviet announcement that internal travel restrictions would not apply to conference participants. A group of U.S., Dutch, and Swedish diplomats tested this announcement by traveling to the infamous Perm-35 labor camp and two Soviet prisons. They were able to see remaining Soviet political prisoners, and a Dutch delegate actually accompanied back to Moscow five who were pardoned as political prisoners by RSFSR President Boris Yeltsin

during the meeting: Alexander Goldovich, Anatoli Khobta, Viktor Olisnevich, Alexei Shcherbakov, and Valery Yanin. However, delegations were disappointed that other Soviet promises to review refusenik cases and general emigration policy during the course of the meeting were not taken up. Disturbingly, no action has been taken on those prisoners under Soviet rather than RSFSR jurisdiction, who can be freed only by Gorbachev, or on the remaining refusenik cases, two months after the start of the meeting.

Overall, the implementation review was not stinted but had a certain sterile quality. Delegations saw that some human rights violations persisted, while new ones were appearing across Europe, largely connected with ethnic and racial hatred. However, the implementation review yielded little sense of increased national willingness to address problem areas or of progress in the international search for solutions. Notably, the Human Dimension Mechanism, which had been created at the Vienna Follow-Up Meeting to allow any participating State to raise instances of non-compliance with any other state at any time, with the other state committed to respond, had been used in only three situations since the Copenhagen Meeting, a marked decrease. Approximately 26 delegations had used it in response to the January 1991 Soviet-sponsored violence in Lithuania and Latvia, over 14 had used it in response to Serbian actions in Kosovo, and a few delegations had invoked it in response to violence against Armenians in Nagorno-Karabakh. Much attention was devoted to strengthening the mechanism (see below for more detailed discussion), but its use was not a focal point of implementation review. Many felt that a new approach to implementation review would be needed in future.

New Directions for the CSCE

Coming only 6 months before the opening of the Helsinki Follow-Up Meeting, the Moscow Meeting was a forum for early thoughts on what major changes and developments the CSCE would need in order to function effectively in the post-Cold War, post-Communism Europe. The meeting's Moscow location could not have been more apt; not only were delegates constantly reminded of the new situation in which the August coup attempt and its aftermath had placed all of the CSCE, but they were also confronted daily with the uncertainty of the future: a disintegrating center, increasingly sovereign republics, calls for independence, local determination to exercise sovereignty including foreign and defense policy.

The growth of republic autonomy in the Soviet Union, together with the emergence of quasi-independent entities in Yugoslavia, proved to be an issue the CSCE was not ready to confront. British and German efforts to introduce language committing "sub-national entities" to CSCE principles and standards in the field of human rights were rejected by other states skittish at the prospect of acknowledging such entities in international documents, much less the "emerging states" that the Germans had initially proposed to discuss.

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The emerging states made themselves known, however: both Armenia and Georgia requested observer status during the course of the meeting. The Georgian request was handed to the Irish chairman of the next plenary, who determined informally that consensus for Georgian observer status did not exist and merely noted the request and lack of consensus in the journal of the day. Clearly, many delegations were concerned about the human rights situation in Georgia as well as the larger question of republic relationships to the CSCE. An Armenian request at the conclusion of the meeting was not acted upon. In both cases, the Soviet delegation supported the requests of the republics, saying that closer association with the CSCE could only improve the republics' observation of CSCE commitments. However, the Soviets had refused a Ukrainian request, made prior to the meeting, for participating state status. Ukraine then declined a seat on the Soviet delegation.

With the CSCE having grown by three states since the previous CDH (Albania, Estonia, Latvia, and Lithuania joined; the German Democratic Republic unified with the Federal Republic of Germany), and other aspirant states lining up, U.S. head of delegation Max Kampelman wondered whether "further additions [would] produce a change of chemistry, a change of approach, a possible change of spirit and perhaps of dedication."

Precisely these considerations, along with concern that the CSCE had not been able to do more to stop the violence in Yugoslavia and to react to the coup attempt in the Soviet Union, led German Foreign Minister Genscher to propose an ambitious new direction for the CSCE. Germany stated in speeches and a "food-for-thought" proposal that human rights were clearly an area of international concern; if this were the case, serious violations of Helsinki principles by a participating state should entitle the other participating States to isolate the offender and take whatever measures they chose, without the offending state's consensus, to return it to compliance.

Although this proposal would be a radical shift for the CSCE away from consensus decisions and a role in bringing countries together and forging joint positions rather than a tool for isolation and punishment, it drew surprising support from delegations in Moscow. Co-sponsors of the proposal included the Soviet Union, Austria, Ireland, Luxembourg, the Netherlands, and Bulgaria, with support coming from the other new democracies. Realizing that their "modest proposal" would not gain consensus on its first appearance, Germany settled for reaffirmation that human dimension commitments are "matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned," in the opening section of the Moscow Document. But, given continuing frustration with the lack of progress in the conflict in Yugoslavia and concern with CSCE's growing unwieldiness, the proposal is certain to reemerge. Although the United States did not support the German proposal, Ambassador Kampelman indicated in his closing statement that "we should continue the search for a method, to be initially established by consensus, under which serious breaches of behavior

and commitment can be met by the CSCE community without fear of a veto by the state responsible for the severe breach of CSCE standards."

Papers were also tabled and informally discussed in Moscow on transforming the CSCE Office for Free Elections into an Office for Democratic Institutions. One of Secretary Baker's initiatives, this idea had gained considerable support and will be further discussed at the Oslo Meeting on Democratic Institutions and by the Committee of Senior Officials. The delegations of member states of the European Community and some other European delegations, particularly Sweden, continued to push for closer CSCE ties to the Council of Europe, to which the United States does not belong. The United States could not agree with these proposals, but many states would like to see the Council of Europe be the body charged with implementing CSCE standards in the human rights area.

The future of the CDH itself was unclear at the end of the conference. No concrete proposals were tabled, but some delegations seemed to feel that regular CDH meetings should continue, while others pressed for greater institutionalization of the CDH process, even to the establishment of a standing committee.

Negotiation of the Final Document

Delegations came to Moscow determined to have a final document to mark the holding of a meeting in Moscow. After the difficult July meeting on national minorities, there was general agreement that the first task of Moscow was to provide the CSCE with a tool to better monitor and enforce human rights, particularly the rights of persons belonging to national minorities. To accomplish this, delegations envisioned strengthening CSCE's Human Dimension Mechanism (see below). Work began immediately in Moscow on this and other proposals carried over from the Geneva meeting. At the same time, ideas and non-papers were circulated on other issues which delegations wanted to be considered, or expanded from their coverage in the Copenhagen Document.

After 2 weeks, proposals were divided into three groups -- human dimension mechanism proposals, rule of law/democratic institutions, and miscellaneous. Austrian, Norwegian, and Soviet coordinators were chosen to direct the drafting work.

i. Human Dimension Mechanism

The original human dimension mechanism is a set of commitments made in the concluding document of the Vienna Follow-Up Meeting (1986-9). The Copenhagen Meeting of the CDH refined the Vienna provisions. The two documents commit each of the participating States:

1. to respond in writing within 4 weeks to requests for information and to representations from any other participating State on specific cases or situations relating to commitments in the human dimension of the CSCE;

2. to meet bilaterally, as soon as possible but as a rule within 3 weeks, with participating States requesting such a meeting to examine these cases or situations;

3. to bring, if it is deemed necessary, these cases and situations to the attention of the other participating States; and

4. to provide, if it is deemed necessary, at the three meetings of the CDH as well as CSCE follow-up meetings, information on what has transpired under paragraphs 1 and 2 above.

Already at the Paris meeting of the CDH in 1989, delegations tried to enhance the mechanism. Further efforts at the Copenhagen CDH in 1990 and the Geneva CSCE Meeting on National Minorities in 1991 had also been unsuccessful, partly because delegations did not see the utility of or were unwilling to subject themselves to a stronger mechanism, but also because some delegations had such strong national ideas of what the enhanced mechanism should be that they were unable to compromise.

By Moscow, however, the perception that the CSCE needed to move from just setting standards to enforcing their implementation had created a clear role for an enhanced mechanism, particularly as a tool to address the problems of national minorities and to put pressure on governments with poor human rights records. The failed Moscow coup, followed by Soviet eagerness to "create international guarantees for implementing the primacy of democracy and human rights," as Soviet co-head of delegation Yuri Deryabin put it in his closing statement, was added to frustration with continued violations of basic human rights in Yugoslavia. The resulting pressure made enhancement of the Mechanism the sine qua non for the Moscow Meeting.

The relatively few uses of the mechanism in the year between the Copenhagen and Moscow meetings was seen as a further indication that development of the mechanism was needed. In Moscow, a long-standing proposal of the neutral and non-aligned countries for human rights observers, to be sent quickly and without right of refusal (analogous to the challenge inspection provided for in the confidence- and security-building agreements of CSCE's military security basket) was merged with an Austrian proposal for rapporteurs, who could go into a country and assess a case or situation for the CSCE.

The European Community worked along similar lines at Moscow, but used the term fact-finding, rather than observe or report. The EC proposal also envisaged that a number of states, rather than one alone, would have to support a fact-finding mission for it to take place. A Netherlands proposal supported by most EC countries set out extensive modalities for this approach.

The United States came to the meeting with a different approach, envisioning a mechanism providing the good offices of CSCE experts for states that recognized their problems and wanted some help addressing them. Eventually adopted as the first stage of the Moscow Mechanism, the U.S. proposal permits a state to request that a panel be established from a list of experts nominated by all participating States. The panel would then enter the requesting State and be free to investigate and take whatever actions it thought desireable to further dialogue and resolution of the situation for which it had been formed.

The next stages of the mechanism as agreed in Moscow are incrementally more intrusive and mandatory. If a good offices mission is unsuccessful, or if another state is unsuccessful in its efforts to convince a state to request such a panel for itself, one state seconded by five others may send a fact-finding mission to the state. In cases of "particularly serious threat to the fulfillment of the provisions of the CSCE human dimension," one state seconded by nine others may send a fact-finding mission immediately, without going through the good offices phase first.

ii. Rule of Law and Democratic Institutions

In Moscow, it was often suggested that this vein of proposals had been mined out in Copenhagen. Indeed, the proposals adopted in this area were marginal advances over previous meetings. It was obvious that, because of differing national systems and particular national concerns, some delegations -- not necessarily the newest democracies -- were unwilling to go further in this area. Valuable concepts of administrative law, independent judiciary, freedom of expression, restrictions on states of emergency, and civilian control of military and security forces were watered down in wordsmithing exercises. But, the

Moscow Document does contain new CSCE commitments in all the above areas as well as on the right to privacy and the rights of arrestees.

iii. Miscellaneous Proposals

The breadth of issues dealt with in this group was perhaps its most remarkable feature. For the first time, CSCE addressed itself in detail to the rights of women and persons with disabilities -- a development heralded by some and decried as a descent to special interest groups and secondary issues by others. (Language on indigenous persons did not find consensus; the rights of homosexuals, while raised in plenary by several delegations, also did not find their way into the text.) The discussion of these issues seemed to herald a shift from the political and civil to the socio-economic aspect of human rights.

The problems of persons belonging to national minorities were raised in this group as well, but coming so soon after the Geneva meeting devoted to the issue, little progress seemed possible. Migrant workers, however, received promises of a "focused discussion," by which sponsoring delegations understood a post-Helsinki seminar. In these areas, as well as capital punishment and others, language repeating or varying the Copenhagen Document was adopted more to indicate that the issue had been raised than to indicate any substantive progress or commitment.

The role of non-governmental organizations (NGOs) in the CSCE was extensively discussed. Several proposals were made in the attempt to give NGOs, or certain NGOs, particular status at the CSCE or to give NGOs specific duties in the implementation and review of implementation of CSCE commitments. These proposals included the creation of NGO monitoring points in each participating State (USSR), giving certain NGOs status as is done by the United Nations (Poland), and mandating the creation of a governmental body to interact with NGOs (Norway). The Soviet Union was among the strongest supporters of these proposals, arguing that institutionalization of NGOs was one way to deal with continuing human rights problems throughout the republics and the threat of future large-scale abuses, such as had taken place in the past, by creating an "early warning system" on the international level.

The prevailing approach, however, was based on a U.S. proposal which sought to increase NGO freedom to observe and interact with CSCE governments as NGOs saw fit, rather than cast them into an institutionalized and possibly limiting role and status. The proposal also aimed to put in writing some of the higher standards for NGO access to CSCE meetings which had been established at Copenhagen and Geneva but not observed at all other recent CSCE sessions. Here again, some states were not ready to adopt this approach and the resulting agreed language fell short of the U.S.
vision.

VIII. Conclusions

The Moscow Meeting concluded Friday, October 4, 1991. In some respects, it was a success. Well-run overall despite many fears to the contrary in the months before the conference, the meeting provided a showcase for the post-coup Soviet Government and allowed the CSCE to make a physical show of support for the reform process in the Soviet Union by setting up there for 4 weeks.

Disturbingly, promises by Soviet Foreign Minister Pankin and the Russian co-head of delegation Kovalyev to review remaining refusenik cases did not bear fruit during the meeting. Indeed, at this writing no action has been taken, although the Commission delegation, the U.S. delegation to the meeting and several other delegations raised the issue and specific cases during the meeting. Given the changes across the board in the Soviet Union, and the otherwise-forthcoming attitude of Soviet participants, this inaction is inexplicable -- and distressing.

The new mechanism procedures adopted open up the possibility of the CSCE playing a mediating, problem-solving role in human rights-related problems within countries, a positive step which had previously been absent. The mechanism procedures, by their intrusive and mandatory nature, also reinforce the new CSCE commitment to the internationalization of human dimension issues, and make real the commitment to make "interference in internal affairs" an excuse of the past.

Other provisions of the document also represent some progress in the areas of rule of law, treatment of NGOs within the CSCE process, the recognition of the rights of migrant workers, women and persons with disabilities, and others.

But, overall the document was cause for, if not disappointment, reflection about the future of the Human Dimension and its ability to deal with the pressing problems of the day. Complaints fell into several categories: disappointment with the inability to go further in certain areas, most notably on national minorities; a general sense that, as Ambassador Kampelman said in his closing statement, the process is "running out of words"; and the Canadian ambassador's closing comment, echoed by the Soviets and others, that discussion had proceeded "as if the meeting were unaware or indifferent or hapless about the events surrounding it."

The first problem is perhaps a symptom of the other two. In the search for more words to put on paper, delegations often fell back on rewriting commitments from Copenhagen or other CSCE or international documents. Those commitments were often already compromises; with so many meetings in such a short space of time, and beset with all the uncertainties of present-day Europe, many governments were simply unwilling to

go further in controversial areas. This brings into question the CDH's further usefulness as a standard-setting body: how much more can all CSCE states agree, and to what purpose?

CSCE now has several important human rights documents, and new procedures for implementation to its credit. With a new set of difficult human dimension problems cropping up to replace those associated with the old regimes in East-Central Europe and the Soviet Union, the CSCE must find new ways to ensure that its many existing commitments are fully implemented, and that violators can be called to account. Concern with this problem has led to strong support for the German proposal to move away from the consensus rule. It is, however, an open question whether 37 states could regularly agree and implement measures which would have a positive effect on states in serious violation of their CSCE commitments, rather than drive them further into isolation.

Moreover, the CSCE has no way of dealing with so-called "emerging states," despite their centrality to many of the human dimension problems now developing in Europe. Unwillingness to address this issue on the part of many governments gave the Moscow Meeting a certain air of unreality, in light of the steady progress toward some form of independence by numerous Soviet and Yugoslav republics.

The proliferation of documents with marginally new commitments in a problem across the board in CSCE, not just in the Human Dimension. So too is the inability to make progress on the real problems facing Europe, such as the Yugoslav civil war.

A future Human Dimension, whether institutionalized in an Office for Democratic Institutions, transformed into annual meetings, or dealt with elsewhere in the CSCE, will have to address these issues. Otherwise, it risks becoming not only separated from events in Europe but irrelevant to them.

DOCUMENT
OF THE MOSCOW MEETING OF THE CONFERENCE ON THE HUMAN DIMENSION OF THE CSCE

The representatives of the participating States of the Conference on Security and Co-operation in Europe (CSCE), Albania, Austria, Belgium, Bulgaria, Canada, Cyprus, the Czech and Slovak Federal Republic, Denmark, Estonia, Finland, France, Germany, Greece, the Holy See, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, the Netherlands-European Community, Norway, Poland, Portugal, Romania, San Marino, Spain, Sweden, Switzerland, Turkey, the USSR, the United Kingdom, the United States of America and Yugoslavia, met in Moscow from 10 September to 4 October 1991, in accordance with the provisions relating to the Conference on the Human Dimension of the CSCE contained in the Concluding Document of the Vienna Follow-up Meeting of the CSCE.

They welcomed the admission as participating States of Estonia, Latvia and Lithuania decided at an additional Meeting at ministerial level of the representatives of the participating States in Moscow on 10 September 1991, convened by the Federal Minister for Foreign Affairs of the Federal Republic of Germany, Chairman-in-Office of the CSCE Council, prior to the opening of the Moscow Meeting.

The first Meeting of the Conference was held in Paris from 30 May to 23 June 1989. The second Meeting of the Conference was held in Copenhagen from 5 to 29 June 1990.

The Moscow Meeting was opened by the Minister for Foreign Affairs of the USSR. An opening address was delivered by the President of the USSR on behalf of the host country.

Opening statements were made by delegates of the participating States, among them Ministers, Deputy Ministers and the Vice-President of the Commission of the European Communities. A contribution to the Meeting was made by the Secretary General of the Council of Europe.

The participating States renew their commitment to implement fully all the principles and provisions of the Final Act of the Conference on Security and Co-operation in Europe, of the Charter of Paris for a New Europe and of the other CSCE documents relating to the human dimension, including, in particular, the Document of the Copenhagen Meeting of the Conference

on the Human Dimension of the CSCE, and are determined to achieve still further progress in the implementation of these provisions, as full respect for human rights and fundamental freedoms and the development of societies based on pluralistic democracy and the rule of law are prerequisites for a lasting order of peace, security, justice and co-operation in Europe.

In this context, the participating States underlined that, in accordance with the Final Act of the Conference on Security and Co-operation in Europe and the Charter of Paris for a New Europe, the equal rights of peoples and their right to self-determination are to be respected in conformity with the Charter of the United Nations and the relevant norms of international law, including those relating to territorial integrity of States.

At the Moscow Meeting views were expressed by the participating States on the implementation of their commitments in the field of the human dimension. They considered that the degree of compliance with the commitments contained in the relevant provisions of the CSCE documents had shown further substantial improvement since the Copenhagen Meeting. They also considered that, in spite of the significant progress made, serious threats to and violations of CSCE principles and provisions continue to exist and have a sobering effect on the assessment of the over all situation in Europe. In particular, they deplored acts of discrimination, hostility and violence against persons or groups on national, ethnic or religious grounds. The participating States therefore expressed the view that, for the full realization of their commitments relating to the human dimension, continued efforts are still required which should benefit substantially from the profound political changes that have occurred.

The participating States emphasize that issues relating to human rights, fundamental freedoms, democracy and the rule of law are of international concern, as respect for these rights and freedoms constitutes one of the foundations of the international order. They categorically and irrevocably declare that the commitments undertaken in the field of the human dimension of the CSCE are matters of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned. They express their determination to fulfil all of their human dimension commitments and to resolve by peaceful means any related issue, individually and collectively, on the basis of mutual respect and co-operation. In this context they recognize that the active involvement of persons, groups, organizations and institutions is essential to ensure continuing progress in this direction.

The participating States express their collective determination to further safeguard human rights and fundamental freedoms and to consolidate democratic advances in their territories. They also recognize a compelling need to increase the CSCE's effectiveness in addressing human rights concerns that arise in their territories at this time of profound change in Europe.

In order to strengthen and expand the human dimension mechanism described in the section on the human dimension of the CSCE in the Concluding Document of the Vienna Meeting and to build upon and deepen the commitments set forth in the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, the participating States adopt the following:

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(1) The participating States emphasize that the human dimension mechanism described in paragraphs 1 to 4 of the section on the human dimension of the CSCE in the Vienna Concluding Document constitutes an essential achievement of the CSCE process, having demonstrated its value as a method of furthering respect for human rights, fundamental freedoms, democracy and the rule of law through dialogue and co-operation and assisting in the resolution of specific relevant questions. In order to improve further the implementation of the CSCE commitments in the human dimension, they decide to enhance the effectiveness of this mechanism and to strengthen and expand it as outlined in the following paragraphs.

(2) The participating States amend paragraphs 42.1 and 42.2 of the Document of the Copenhagen Meeting to the effect that they will provide in the shortest possible time, but no later than ten days, a written response to requests for information and to representations made to them in writing by other participating States under paragraph 1 of the human dimension mechanism. Bilateral meetings, as referred to in paragraph 2 of the human dimension mechanism, will take place as soon as possible, and as a rule within one week of the date of the request.

(3) A resource list comprising up to three experts appointed by each participating State will be established without delay at the CSCE Institution*. The experts will be eminent persons, preferably experienced in the field of the human dimension, from whom an impartial performance of their functions may be expected.

The experts will be appointed for a period of three to six years at the discretion of the appointing State, no expert serving more than two consecutive terms. Within four weeks after notification by the CSCE Institution of the appointment, any participating State may make reservations regarding no more than two experts to be appointed by another participating State. In such case, the appointing State may, within four weeks of being notified of such reservations, reconsider its decision and appoint another expert or experts; if it confirms the appointment originally intended, the expert concerned cannot take part in any procedure with respect to the State having made the reservation without the latter's express consent.

The resource list will become operational as soon as 45 experts have been appointed.

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* The Council will take the decision on the institution.

(4) A participating State may invite the assistance of a CSCE mission, consisting of up to three experts, to address or contribute to the resolution of questions in its territory relating to the human dimension of the CSCE. In such case, the State will select the person or persons concerned from the resource list. The mission of experts will not include the participating State's own nationals or residents or any of the persons it appointed to the resource list or more than one national or resident of any particular State.

The inviting State will inform without delay the CSCE Institution when a mission of experts is established, which in turn will notify all participating States. The CSCE institutions will also, whenever necessary, provide appropriate support to such a mission.

(5) The purpose of a mission of experts is to facilitate resolution of a particular question or problem relating to the human dimension of the CSCE. Such mission may gather the information necessary for carrying out its tasks and, as appropriate, use its good offices and mediation services to promote dialogue and co-operation among interested parties. The State concerned will agree with the mission on the precise terms of reference and may thus assign any further functions to the mission of experts, inter alia fact-finding and advisory services, in order to suggest ways and means of facilitating the observance of CSCE commitments.

(6) The inviting State will co-operate fully with the mission of experts and facilitate its work. It will grant the mission all the facilities necessary for the independent exercise of its functions. It will, inter alia, allow the mission, for the purpose of carrying out its tasks, to enter its territory without delay, to hold discussions and to travel freely therein, to meet freely with officials, non-governmental organizations and any group or person from whom it wishes to receive information. The mission may also receive information in confidence from any individual, group or organization on questions it is addressing. The members of such missions will respect the confidential nature of their task.

The participating States will refrain from any action against persons, organizations or institutions on account of their contact with the mission of experts or of any publicly available information transmitted to it. The inviting State will comply with any request from a mission of experts to be accompanied by officials of that State if the mission considers this to be necessary to facilitate its work or guarantee its safety.

(7) The mission of experts will submit its observations to the inviting State as soon as possible, preferably within three weeks after the mission has been established. The inviting State will transmit the observations of the mission, together with a description of any action it has taken or intends to take upon it, to the other participating States via the CSCE Institution no later than three weeks after the submission of the observations.

These observations and any comments by the inviting State may be discussed by the Committee of Senior Officials, which may consider any possible follow-up action. The observations and comments will remain confidential until brought to the attention of the Senior Officials. Before the circulation of the observations and any comments, no other mission of experts may be appointed for the same issue.

(8) Furthermore, one or more participating States, having put into effect paragraphs 1 or 2 of the human dimension mechanism, may request that the CSCE Institution inquire of another participating State whether it would agree to invite a mission of experts to address a particular, clearly defined question on its territory relating to the human dimension of the CSCE. If the other participating State agrees to invite a mission of experts for the purpose indicated, the procedure set forth in paragraphs 4 to 7 will apply.

(9) If a participating State (a) has directed an enquiry under paragraph 8 to another participating State and that State has not established a mission of experts within a period of ten days after the enquiry has been made, or (b) judges that the issue in question has not been resolved as a result of a mission of experts, it may, with the support of at least five other participating States, initiate the establishment of a mission of up to three CSCE rapporteurs. Such a decision will be addressed to the CSCE Institution, which will notify without delay the State concerned as well as all the other participating States.

(10) The requesting State or States may appoint one person from the resource list to serve as a CSCE rapporteur. The requested State may, if it so chooses, appoint a further rapporteur from the resource list within six days after notification by the CSCE Institution of the appointment of the rapporteur. In such case the two designated rapporteurs, who will not be nationals or residents of, or persons appointed to the resource list by any of the States concerned, will by common agreement and without delay appoint a third rapporteur from the resource list. In case they fail to reach agreement within eight days, a third rapporteur who will not be a national or resident of, or a person appointed to the resource list by any of the States concerned, will be appointed from the resource list by

the ranking official of the CSCE body designated by the Council. The provisions of the second part of paragraph 4 and the whole of paragraph 6 also apply to a mission of rapporteurs.

(11) The CSCE rapporteur(s) will establish the facts, report on them and may give advice on possible solutions to the question raised. The report of the rapporteur(s), containing observations of facts, proposals or advice, will be submitted to the participating State or States concerned and, unless all the States concerned agree otherwise, to the CSCE Institution no later than three weeks after the last rapporteur has been appointed. The requested State will submit any observations on the report to the CSCE Institution, unless all the States concerned agree otherwise, no later than three weeks after the submission of the report.

The CSCE Institution will transmit the report, as well as any observations by the requested State or any other participating State, to all participating States without delay. The report may be placed on the agenda of the next regular meeting of the Committee of Senior Officials, which may decide on any possible follow-up action. The report will remain confidential until after that meeting of the Committee. Before the circulation of the report no other rapporteur may be appointed for the same issue.

(12) If a participating State considers that a particularly serious threat to the fulfilment of the provisions of the CSCE human dimension has arisen in another participating State, it may, with the support of at least nine other participating States, engage the procedure set forth in paragraph 10. The provisions of paragraph 11 will apply.

(13) Upon the request of any participating State the Committee of Senior Officials may decide to establish a mission of experts or of CSCE rapporteurs. In such case the Committee will also determine whether to apply the appropriate provisions of the preceding paragraphs.

(14) The participating State or States that have requested the establishment of a mission of experts or rapporteurs will cover the expenses of that mission. In case of the appointment of experts or rapporteurs pursuant to a decision of the Committee of Senior Officials, the expenses will be covered by the participating States in accordance with the usual scale of distribution of expenses. These procedures will be reviewed by the Helsinki Follow-up Meeting of the CSCE.

(15) Nothing in the foregoing will in any way affect the right of participating States to raise within the CSCE process any issue relating to the implementation of any CSCE commitment, including any commitment relating to the human dimension of the CSCE.

(16) In considering whether to invoke the procedures in paragraphs 9 and 10 or 12 regarding the case of an individual, participating States should pay due regard to whether that individual's case is already sub judice in an international judicial procedure.

Any reference to the Committee of Senior Officials in this document is subject to the decision of that Committee and the Council.

(17) The participating States

(17.1) - condemn unreservedly forces which seek to take power from a representative government of a participating State against the will of the people as expressed in free and fair elections and contrary to the justly established constitutional order;

(17.2) - will support vigorously, in accordance with the Charter of the United Nations, in case of overthrow or attempted overthrow of a legitimately elected government of a participating State by undemocratic means, the legitimate organs of that State upholding human rights, democracy and the rule of law, recognizing their common commitment to countering any attempt to curb these basic values;

(17.3) - recognize the need to make further peaceful efforts concerning human rights, democracy and the rule of law within the context of security and co-operation in Europe, individually and collectively, to make democratic advances irreversible and prevent any falling below the standards laid down in the principles and provisions of the Final Act, the Vienna Concluding Document, the Document of the Copenhagen Meeting, the Charter of Paris for a New Europe and the present document.

(18) The participating States recall their commitment to the rule of law in the Document of the Copenhagen Meeting and affirm their dedication to supporting and advancing those principles of justice which form the basis of the rule of law. In particular, they again reaffirm that democracy is an inherent element in the rule of law and that pluralism is important in regard to political organizations.

(18.1) Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives.

(18.2) Everyone will have an effective means of redress against administrative decisions, so as to guarantee respect for fundamental rights and ensure legal integrity.

(18.3) To the same end, there will be effective means of redress against administrative regulations for individuals affected thereby.

(18.4) The participating States will endeavour to provide for judicial review of such regulations and decisions.

(19) The participating States

(19.1) - will respect the internationally recognized standards that relate to the independence of judges and legal practitioners and the impartial operation of the public judicial service including, inter alia, the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights;

(19.2) - will, in implementing the relevant standards and commitments, ensure that the independence of the judiciary is guaranteed and enshrined in the constitution or the law of the country and is respected in practice, paying particular attention to the Basic Principles on the Independence of the Judiciary, which, inter alia, provide for

(i) prohibiting improper influence on judges;

(ii) preventing revision of judicial decisions by administrative authorities, except for the rights of the competent authorities to mitigate or commute sentences imposed by judges, in conformity with the law;

(iii) protecting the judiciary's freedom of expression and association, subject only to such restrictions as are consistent with its functions;

(iv) ensuring that judges are properly qualified, trained and selected on a non-discriminatory basis;

(v) guaranteeing tenure and appropriate conditions of service, including on the matter of promotion of judges, where applicable;

(vi) respecting conditions of immunity;

(vii) ensuring that the disciplining, suspension and removal of judges are determined according to law.

(20) For the promotion of the independence of the judiciary, the participating States will

(20.1) - recognize the important function national and international associations of judges and lawyers can perform in strengthening respect for the independence of their members and in providing education and training on the role of the judiciary and the legal profession in society;

(20.2) - promote and facilitate dialogue, exchanges and co-operation among national associations and other groups interested in ensuring respect for the independence of the judiciary and the protection of lawyers;

(20.3) - co-operate among themselves through, inter alia, dialogue, contacts and exchanges in order to identify where problem areas exist concerning the protection of the independence of judges and legal practitioners and to develop ways and means to address and resolve such problems;

(20.4) - co-operate on an ongoing basis in such areas as the education and training of judges and legal practitioners, as well as the preparation and enactment of legislation intended to strengthen respect for their independence and the impartial operation of the public judicial service.

(21) The participating States will

(21.1) - take all necessary measures to ensure that law enforcement personnel, when enforcing public order, will act in the public interest, respond to a specific need and pursue a legitimate aim, as well as use ways and means commensurate with the circumstances, which will not exceed the needs of enforcement;

(21.2) - ensure that law enforcement acts are subject to judicial control, that law enforcement personnel are held accountable for such acts, and that due compensation may be sought, according to domestic law, by the victims of acts found to be in violation of the above commitments.

(22) The participating States will take appropriate measures to ensure that education and information regarding the prohibition of excess force by law enforcement personnel as well as relevant international and domestic codes of conduct are included in the training of such personnel.

(23) The participating States will treat all persons deprived of their liberty with humanity and with respect for the inherent dignity of the human person and will respect the internationally recognized standards that relate to the administration of justice and the human rights of detainees.

(23.1) The participating States will ensure that

(i) no one will be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law;

(ii) anyone who is arrested will be informed promptly in a language which he understands of the reason for his arrest, and will be informed of any charges against him;

(iii) any person who has been deprived of his liberty will be promptly informed about his rights according to domestic law;

(iv) any person arrested or detained will have the right to be brought promptly before a judge or other officer authorized by law to determine the lawfulness of his arrest or detention, and will be released without delay if it is unlawful;

(v) anyone charged with a criminal offence will have the right to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(vi) any person arrested or detained will have the right, without undue delay, to notify or to require the competent authority to notify appropriate persons of his choice of his arrest, detention, imprisonment and whereabouts; any restriction in the exercise of this right will be prescribed by law and in accordance with international standards;

(vii) effective measures will be adopted, if this has not already been done, to provide that law enforcement bodies do not take undue advantage of the situation of a detained or imprisoned person for the purpose of compelling him to confess, or otherwise to incriminate himself, or to force him to testify against any other person;

(viii) the duration of any interrogation and the intervals between them will be recorded and certified, consistent with domestic law;

(ix) a detained person or his counsel will have the right to make a request or complaint regarding his treatment, in particular when torture or other cruel, inhuman or degrading treatment has been applied, to the authorities responsible for the administration of the place of detention and to higher authorities, and when necessary, to appropriate authorities vested with reviewing or remedial power;

(x) such request or complaint will be promptly dealt with and replied to without undue delay; if the request or complaint is rejected or in case of inordinate delay, the complainant will be entitled to bring it before a judicial or other authority; neither the detained or imprisoned person nor any complainant will suffer prejudice for making a request or complaint.

(xi) anyone who has been the victim of an unlawful arrest or detention will have a legally enforceable right to seek compensation.

(23.2) The participating States will

(i) endeavour to take measures, as necessary, to improve the conditions of individuals in detention or imprisonment;

(ii) pay particular attention to the question of alternatives to imprisonment.

(24) The participating States reconfirm the right to the protection of private and family life, domicile, correspondence and electronic communications. In order to avoid any improper or arbitrary intrusion by the State in the realm of the individual, which would be harmful to any democratic society, the exercise of this right will be subject only to such restrictions as are prescribed by law and are consistent with internationally recognized human rights standards. In particular, the participating States will ensure that searches and seizures of persons and private premises and property will take place only in accordance with standards that are judicially enforceable.

(25) The participating States will

(25.1) - ensure that their military and paramilitary forces, internal security and intelligence services, and the police are subject to the effective direction and control of the appropriate civil authorities;

(25.2) - maintain and, where necessary, strengthen executive control over the use of military and paramilitary forces as well as the activities of the internal security and intelligence services and the police;

(25.3) - take appropriate steps to create, wherever they do not already exist, and maintain effective arrangements for legislative supervision of all such forces, services and activities.

(26) The participating States reaffirm the right to freedom of expression, including the right to communication and the right of the media to collect, report and disseminate information, news and opinions. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards. They further recognize that independent media are essential to a free and open society and accountable systems of government and are of particular importance in safeguarding human rights and fundamental freedoms.

(26.1) They consider that the print and broadcast media in their territory should enjoy unrestricted access to foreign news and information services. The public will enjoy similar freedom to receive and impart information and ideas without interference by public authority regardless of frontiers, including through foreign publications and foreign broadcasts. Any restriction in the exercise of this right will be prescribed by law and in accordance with international standards.

(26.2) The participating States will not discriminate against independent media with respect to affording access to information, material and facilities.

(27) The participating States

(27.1) - express their intention to co-operate in the field of constitutional, administrative, commercial, civil and social welfare laws and other relevant areas, in order to develop, particularly in States where they do not yet exist, legal systems based on respect for human rights, the rule of law and democracy;

(27.2) - to this end, envisage the continuation and enhancement of bilateral and multilateral legal and administrative co-operation, inter alia, in the following fields:

- development of an efficient administrative system;
- assistance in formulating law and regulations;
- training of administrative and legal staff;
- exchange of legal works and periodicals.

(28) The participating States consider it important to protect human rights and fundamental freedoms during a state of public emergency, to take into account the relevant provisions of the Document of the Copenhagen Meeting, and to observe the international conventions to which they are parties.

(28.1) The participating States reaffirm that a state of public emergency is justified only by the most exceptional and grave circumstances, consistent with the State's international obligations and CSCE commitments. A state of public emergency may not be used to subvert the democratic constitutional order, nor aim at the destruction of internationally recognized human rights and fundamental freedoms. If recourse to force cannot be avoided, its use must be reasonable and limited as far as possible.

(28.2) A state of public emergency may be proclaimed only by a constitutionally lawful body, duly empowered to do so. In cases where the decision to impose a state of public emergency may be lawfully taken by the executive authorities, that decision should be subject to approval in the shortest possible time or to control by the legislature.

(28.3) The decision to impose a state of public emergency will be proclaimed officially, publicly, and in accordance with provisions laid down by law. The decision will, where possible, lay down territorial limits of a state of public emergency. The State concerned will make available to its citizens information, without delay, about which measures have been taken. The state of public emergency will be lifted as soon as possible and will not remain in force longer than strictly required by the exigencies of the situation.

(28.4) A de facto imposition or continuation of a state of public emergency not in accordance with provisions laid down by law is not permissible.

(28.5) The participating States will endeavour to ensure that the normal functioning of the legislative bodies will be guaranteed to the highest possible extent during a state of public emergency.

(28.6) The participating States confirm that any derogation from obligations relating to human rights and fundamental freedoms during a state of public emergency must remain strictly within the limits provided for by international law, in particular the relevant international instruments by which they are bound, especially with respect to rights from which there can be no derogation.

(28.7) The participating States will endeavour to refrain from making derogations from those obligations from which, according to international conventions to which they are parties, derogation is possible under a state of public emergency. Measures derogating from such obligations must be taken in strict conformity with the procedural requirements laid down in those instruments. Such measures will neither go further nor remain in force longer than strictly required by the exigencies of the situation; they are by nature exceptional and should be interpreted and applied with restraint. Such measures will not discriminate solely on the grounds of race, colour, sex, language, religion, social origin or of belonging to a minority.

(28.8) The participating States will endeavour to ensure that the legal guarantees necessary to uphold the rule of law will remain in force during a state of public emergency. They will endeavour to provide in their law for control over the regulations related to the state of public emergency, as well as the implementation of such regulations.

(28.9) The participating States will endeavour to maintain freedom of expression and freedom of information, consistent with their international obligations and commitments, with a view to enabling public discussion on the observance of human rights and fundamental freedoms as well as on the lifting of the state of public emergency. They will, in conformity with international standards regarding the freedom of expression, take no measures aimed at barring journalists from the legitimate exercise of their profession other than those strictly required by the exigencies of the situation.

(28.10) When a state of public emergency is declared or lifted in a participating State, the State concerned will immediately inform the CSCE Institution* of this decision, as well as of any derogation made from the State's international human rights obligations. The Institution will inform the other participating States without delay.

(29) The participating States, recognizing their common interest in promoting contacts and the exchange of information amongst Ombudsmen and other institutions entrusted with similar functions of investigating individual complaints of citizens against public authorities, note with appreciation an offer by Spain to host a meeting of Ombudsmen.

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* The Council will take the decision on the institution.

(30) The participating States suggest that the appropriate CSCE fora consider expanding the functions of the Office for Free Elections to enable it to assist in strengthening democratic institutions within the participating States.

(31) The participating States acknowledge the extensive experience and expertise of the Council of Europe in the field of human rights. They welcome its contribution to strengthening democracy in Europe, including its readiness to make its experience available to the CSCE.

III

(32) The participating States reaffirm their enduring commitment to the principles and provisions of the Final Act, the Vienna Concluding Document, and other relevant CSCE documents in which they undertook, inter alia, to respect human rights and fundamental freedoms and to ensure that they are guaranteed for all without distinction of any kind.

(33) The participating States will remove all legal and other restrictions with respect to travel within their territories for their own nationals and foreigners, and with respect to residence for those entitled to permanent residence, except those restrictions which may be necessary and officially declared for military, safety, ecological or other legitimate government interests, in accordance with their national laws, consistent with CSCE commitments and international human rights obligations. The participating States undertake to keep such restrictions to a minimum.

(34) The participating States will adopt, where appropriate, all feasible measures to protect journalists engaged in dangerous professional missions, particularly in cases of armed conflict, and will co-operate to that effect. These measures will include tracing missing journalists, ascertaining their fate, providing appropriate assistance and facilitating their return to their families.

(35) The participating States reaffirm that guaranteeing the freedom of artistic creation and preserving the cultural heritage form part of the human dimension of the CSCE. They consider that independent intellectual and cultural life is crucial for the maintenance of free societies and democratic institutions. They will implement their commitments in the cultural field, as laid down in the Document of the Cracow Symposium on the Cultural Heritage, and express the view that cultural issues, including cultural freedom, creativity and co-operation, should be further considered in the CSCE.

(36) The participating States recall their commitment in the Vienna Concluding Document to keep the question of capital punishment under consideration and reaffirm their undertakings in the Document of the Copenhagen Meeting to exchange information on the question of the abolition of the death penalty and to make available to the public information regarding the use of the death penalty.

(36.1) They note

(i) that the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty entered into force on 11 July 1991;

(ii) that a number of participating States have recently taken steps towards the abolition of capital punishment;

(iii) the activities of several non-governmental organizations concerning the question of the death penalty.

(37) The participating States confirm the provisions and commitments of all CSCE documents, in particular the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE, concerning questions relating to national minorities and the rights of persons belonging to them, and the Report of the Geneva CSCE Meeting of Experts on National Minorities, and call for their full and early implementation. They believe that, in particular, the use of the new and expanded CSCE mechanisms and procedures will contribute to further protection and promotion of the rights of persons belonging to national minorities.

(38) The participating States recognize the need to ensure that the rights of migrant workers and their families lawfully residing in the participating States are respected and underline their right to express freely their ethnic, cultural, religious and linguistic characteristics. The exercise of such rights may be subject to such restrictions as are prescribed by law and are consistent with international standards.

(38.1) They condemn all acts of discrimination on the ground of race, colour and ethnic origin, intolerance and xenophobia against migrant workers. They will, in conformity with domestic law and international obligations, take effective measures to promote tolerance, understanding, equality of opportunity and respect for the fundamental human rights of migrant workers and adopt, if they have not already done so, measures that would prohibit acts that constitute incitement to violence based on national, racial, ethnic or religious discrimination, hostility or hatred.

(38.2) They will adopt appropriate measures that would enable migrant workers to participate in the life of the society of the participating States.

(38.3) They note that issues which concern the human dimension of migrant workers residing on their territory could, as any other issue of the human dimension, be raised under the human dimension mechanism.

(38.4) They recommend that the CSCE in its future work on the human dimension consider appropriate means to hold focused discussions on all issues regarding migrant workers, including inter alia, familiarization with the language and social life of the country concerned.

(39) The participating States will

(39.1) - increase their preparedness and co-operate fully to enable humanitarian relief operations to be undertaken speedily and effectively;

(39.2) - take all necessary steps to facilitate speedy and unhindered access to the affected areas for such relief operations;

(39.3) - make the necessary arrangements for those relief operations to be carried out.

(40) The participating States recognize that full and true equality between men and women is a fundamental aspect of a just and democratic society based on the rule of law. They recognize that the full development of society and the welfare of all its members require equal opportunity for full and equal participation of men and women. In this context they will

(40.1) - ensure that all CSCE commitments relating to the protection and promotion of human rights and fundamental freedoms are applied fully and without discrimination with regard to sex;

(40.2) - comply with the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), if they are parties, and, if they have not already done so, consider ratifying or acceding to this Convention; States that have ratified or acceded to this Convention with reservations will consider withdrawing them;

(40.3) - effectively implement the obligations in international instruments to which they are parties and take appropriate measures to implement the United Nations Nairobi Forward-looking Strategies for the Advancement of Women (FLS);

(40.4) - affirm that it is their goal to achieve not only de jure but de facto equality of opportunity between men and women and to promote effective measures to that end;

(40.5) - establish or strengthen national machinery , as appropriate, for the advancement of women in order to ensure that programmes and policies are assessed for their impact on women;

(40.6) - encourage measures effectively to ensure full economic opportunity for women, including non-discriminatory employment policies and practices, equal access to education and training, and measures to facilitate combining employment with family responsibilities for female and male workers; and will seek to ensure that any structural adjustment policies or programmes do not have an adversely discriminatory effect on women;

(40.7) - seek to eliminate all forms of violence against women, and all forms of traffic in women and exploitation of prostitution of women including by ensuring adequate legal prohibitions against such acts and other appropriate measures;

(40.8) - encourage and promote equal opportunity for full participation by women in all aspects of political and public life, in decision-making processes and in international co-operation in general;

(40.9) - recognize the vital role women and women's organizations play in national and international efforts to promote and enhance women's rights by providing, inter alia, direct services and support to women and encouraging a meaningful partnership between governments and these organizations for the purpose of advancing equality for women;

(40.10) - recognize the rich contribution of women to all aspects of political, cultural, social and economic life and promote a broad understanding of these contributions, including those made in the informal and unpaid sectors;

(40.11) - take measures to encourage that information regarding women and women's rights under international and domestic law is easily accessible;

(40.12) - develop educational policies, consistent with their constitutional systems, to support the participation of women in all areas of study and work, including non-traditional areas, and encourage and promote a greater understanding of issues relating to equality between men and women;

(40.13) - ensure the collection and analysis of data to assess adequately, monitor and improve the situation of women; these data should not contain any personal information.

(41) The participating States decide

(41.1) - to ensure protection of the human rights of persons with disabilities;

(41.2) - to take steps to ensure the equal opportunity of such persons to participate fully in the life of their society;

(41.3) - to promote the appropriate participation of such persons in decision-making in fields concerning them;

(41.4) - to encourage services and training of social workers for the vocational and social rehabilitation of persons with disabilities;

(41.5) - to encourage favourable conditions for the access of persons with disabilities to public buildings and services, housing, transport, and cultural and recreational activities.

(42) The participating States

(42.1) - affirm that human rights education is fundamental and that it is therefore essential that their citizens are educated on human rights and fundamental freedoms and the commitment to respect such rights and freedoms in domestic legislation and international instruments to which they may be parties;

(42.2) - recognize that effective human rights education contributes to combating intolerance, religious, racial and ethnic prejudice and hatred, including against Roma, xenophobia and anti-semitism;

(42.3) - will encourage their competent authorities responsible for education programmes to design effective human rights related curricula and courses for students at all levels, particularly students of law, administration and social sciences as well as those attending military, police and public service schools;

(42.4) - will make information on all CSCE human dimension provisions available to their educators;

(42.5) - will encourage organizations and educational establishments to co-operate in drawing up and exchanging human rights programmes at the national as well as the international level;

(42.6) - will seek to ensure that activities undertaken with a view to promoting human rights education in the broader sense take into account experience, programmes and forms of co-operation within existing international governmental and non-governmental bodies, such as the United Nations and the Council of Europe.

(43) The participating States will recognize as NGOs those which declare themselves as such, according to existing national procedures, and will facilitate the ability of such organizations to conduct their activities freely on their territories; to that effect they will

(43.1) - endeavour to seek ways of further strengthening modalities for contacts and exchanges of views between NGOs and relevant national authorities and governmental institutions;

(43.2) - endeavour to facilitate visits to their countries by NGOs from within any of the participating States in order to observe human dimension conditions;

(43.3) - welcome NGO activities, including, inter alia, observing compliance with CSCE commitments in the field of the human dimension;

(43.4) - allow NGOs, in view of their important function within the human dimension of the CSCE, to convey their views to their own governments and the governments of all the other participating States during the future work of the CSCE on the human dimension.

(43.5) During the future work of the CSCE on the human dimension, NGOs will have the opportunity to distribute written contributions on specific issues of the human dimension of the CSCE to all delegations.

(43.6) The CSCE Secretariat will, within the framework of the resources at its disposal, respond favourably to requests by NGOs for non-restricted documents of the CSCE.

(43.7) Guidelines for the participation of NGOs in the future work of the CSCE on the human dimension might, inter alia, include the following:

(i) NGOs should be allotted common space at such meeting sites or in their immediate vicinity for their use as well as reasonable access, at their own expense, to technical facilities, including photocopying machines, telephones and fax machines,

(ii) NGOs should be informed and briefed on openness and access procedures in a timely manner,

(iii) delegations to CSCE meetings should be further encouraged to include or invite NGO members.

The participating States recommend that the Helsinki Follow-up Meeting consider establishing such guidelines.

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(44) The representatives of the participating States express their profound gratitude to the people and Government of the USSR for the excellent organization of the Moscow Meeting and the warm hospitality extended to the delegations which participated in the Meeting.

Moscow, 3 October 1991